

THE
T R I A L
OF
Richard Vining Perry, Esq.

FOR
Forcible Abduction, or stealing an Heirefs,
From the Boarding-School of Miss MILLS,
In the City of *Bristol*;

With all the ARGUMENTS of COUNSEL,
Before VICARY GIBBS, Esq.
The RECORDER thereof.

On MONDAY the 14th of APRIL, 1794.

Dedicated to all Mr. PERRY's Prosecutors.

With a PREFACE and COMMENTARY on his Trial,

By one of the Counsel.

Audi alteram partem.

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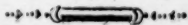
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DEDICATION

To all MR. PERRY's Prosecutors,

And others whom it may concern,



LADIES and GENTLEMEN,

THE Trial of a Gentleman on a charge so old-fashioned in its nature as the forcible abduction of a lady, and marrying her against her consent, cannot with propriety be dedicated to more honourable personages than yourselves. Mr. PERRY has long been indebted to you, and he takes the first opportunity of discharging the obligation. As a man he does not want sympathy for your feeling. Si me vis flere dolendum est ad primum. Had the storm raised by you against him three tedious years ago gently died into a calm, and the ebullition of your minds been quieted by a little cool thinking, you would have been sensible of your error, and the intoxication of your rashness would have vapoured away by the sobriety of your reflection. But unwearied in your purpose you have chased from country to country an affectionate couple; and all your disappointments have sharpened the edge of your invectives.

Th at

That a young lady, and of a very sweet countenance at the head of a school of young people, should be alarmed at the elopement of one of them, and should make all possible inquiries after her till she found some traces of her departure, may well be imagined. Her endeavours to this end were laudable, and deserve the thanks of us all, who have a daughter endearing enough to hang round our hearts, and merit our protection ; but what shall we say to her pursuit of her after she had been gone from Bristol near two days, and was far on her way to Scotland to perform a marriage----what shall we say to her, after that marriage had taken effect, for calling in the aid of a Sampson's arm, and proclaiming her lamentations on the walls of the metropolis ; and then pursuing her quondam scholar into the depredated fields of Flanders ? Wisdom and common sense fly abashed from the question ; the crimson blush suffuses the charming face of modesty ; and proclaims indignantly the absence of a little judgment to have taught her better. She is nevertheless a woman, a lady, and a fondness for her sex inhibits the severity of a remark. Possibly she did her duty and would have staid at home ; but that some kind and generous friends among men, pitying the lost lamb, and envying the bliss of the possessor, stepped forward and propelled her uncheerfully to all that followed. Why else after the fugitive young lady had been married in London, at the request of the mother, who had been present on the occasion,

and

and had signed her name in the registry, pursue Mr. PERRY till she brought him to prison. One would have thought that, after this second marriage, all the imaginary evils which the distortion of distempered brains had raised before you like so many spectres in the dead of night, would have vanished; and you unaffrighted be brought to yourselves; but it enlarged your aggravation, and like envy, as beautifully described by the Poet Ovid, you lamented the more, because you had nothing to lament. Had you composed your tempers into peace, his prosecution must have fallen dead born to the earth: his ignominious death never been thought of, and his prosecutors' conduct have escaped observation. Surely these good people were not to be gratified by removing him from the face of the earth! Horrid thought! women---ladies---the softer sex---the partners of our hearts, whose becoming eyes should weep the tears of sensibility---could not be so sanguinary---only for a pupil lost, and found sheltered in the sun-shine of bliss---the arms of her husband, sanctioned by the laws of both Scotland and England.

Yet his caption as a felon was meditated deceptively at a time he could not bring on his trial, inasmuch that he should at all events be confined as an offender in chief for near twelve months before he could possibly entitle himself to, what he has since obtained, an honourable acquittal by a Jury of his Peers.

Unwilling

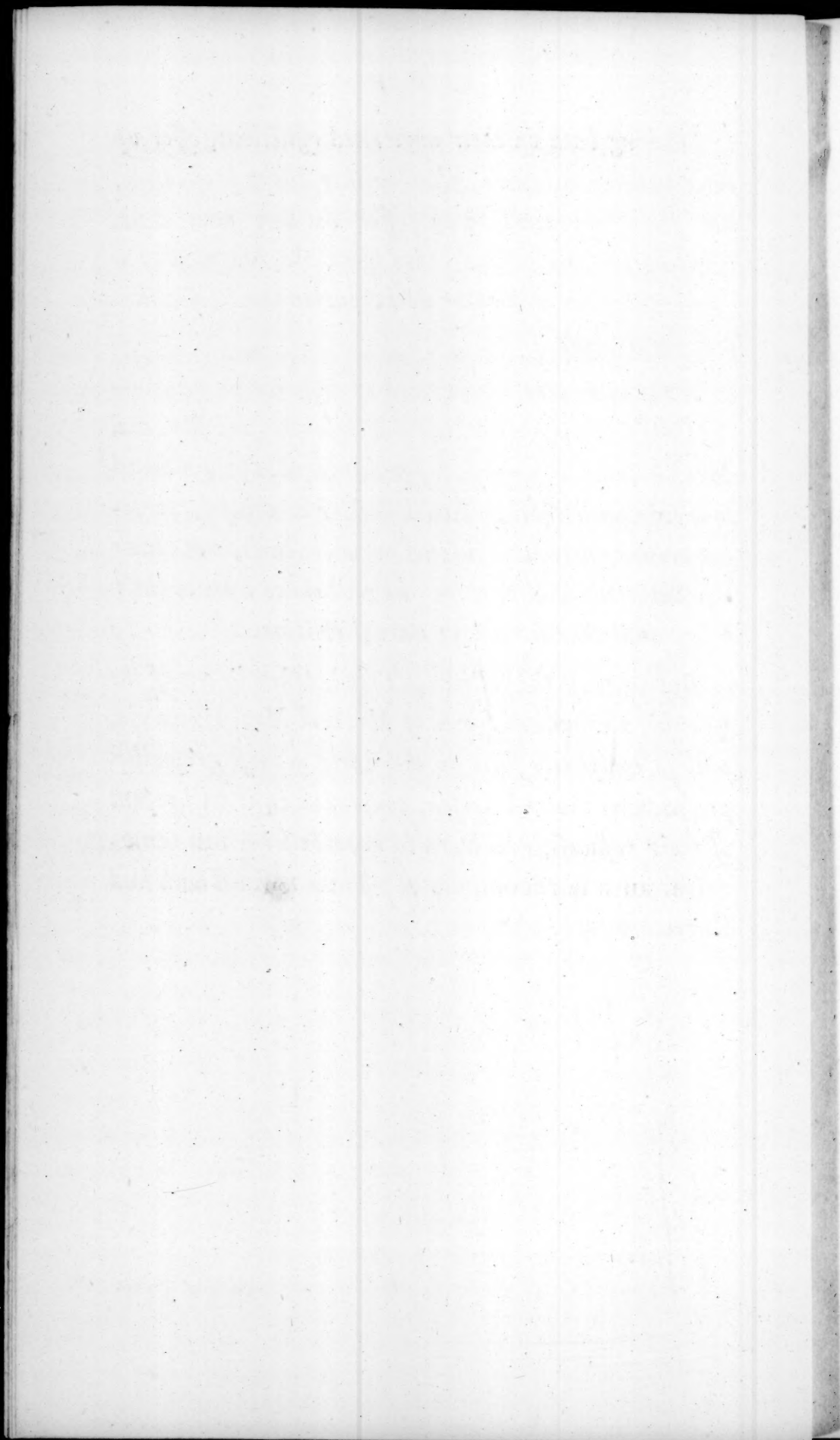
Unwilling to meet him in a criminal court, perhaps to his prosecutors the rattling of chains and the noise of irons—the cells of felons and the horrors of a gaol, were anticipated music in their tuneful ears; and in the mildness of their sentiments proper mansions for the devoted Mr. PERRY: but disappointment again succeeded. His wife would not leave him. She and her infant daughter—a lamb of the God of Love, went with him into prison.—The unexampled hardship of their case worked on the feelings of the keeper—he accommodated them with his own house, a very good one, airy and well furnished, where they lived, he unfettered, and both unbarred, as well as it was possible for an open prison to afford, patiently waiting for the day that is past.

*Reconcile yourselves for all ye have done or said by Mr. PERRY, if ye can. He forgives you, as he hopes himself to be forgiven. He has suffered much by you. Ye have driven him and the dear possessor of his heart from post to post, where clothed in innocence and acting under one will, they laughed at your puny attempts, regretting only the heavy expences you forced them into. Unassisted by you they have borne up against a host of foes, and sustained themselves in their retirement beyond compare. He has been the first friend of his wife, and they both had many. She found none where she had a right to look; and each must have perished for ought to the contrary by those from whom protection was due. They nevertheless pride themselves on their condition;
and*

and looking back on their unmerited afflictions, offer up their prayers to heaven, that neither their prosecutors, nor their opponents, may suffer as they have done. Smiling at their actions, they quote the language of a Judge Supreme : Neither do I condemn thee. Go thou and sin no more.

With them they are arrived at a sacred ne plus.— Their diminutive efforts are now defeated, and Mr. and Mrs. PERRY's compassion for them will be proportioned to their penitentials ; should slander or obliquy, persecution or ignorance, infamy or wickedness, rear their besotted heads against them, he will chase them to their holes, until they are lost in eternal oblivion.

But we trust the following Trial, taken by one of the Counsel, a voluntary friend of Mr. and Mrs. PERRY's, will so completely shew to the world a most groundless prosecution, that all persons concerned in it will repent of their rashness, and learn to know better—ton temeraire, aura sa recompence. Their rashness hath had its recompence. Amen.



P R E F A C E.

A word or two on high birth, and Mr. Perry's.

IF it be any credit to descend from honest parents, who while they endeavoured to reap the fruits of honest industry, also endeavoured to do right by all men, Mr. Perry has a claim to it superior to those of higher birth, or what is more commonly called family rank. Their ideas of personal dignity are less respectful to virtue, than those of the vulgar. No merit can be derived from our progenitors. In narrow minds the high founding names of a title, a pedigree, or an ancient ancestry, intoxicates the brain and hurrys it into pride that brings down scorn and contempt, while the scions of an ordinary house laugh at the destitution of so ridiculous a bauble.

The truest mark of honor is virtue, which as it is its own reward, so likewise is it superior to all terrene distinctions. To emulate her in a limited monarchy like our own, will be attended by the best of effects, while a discretionary power of creating gaudy ranks of men, the result of slavish fedality serves but to foment private envy, and public discontent, even from commoners, who as in Queen Ann's time would reject a bill from the Lords for confining the peerage to a definite number. Titled characters may wisely form a barrier between the crown and
people

people as in Great Britain. So long also as they keep within due bounds and encroach not on either they may be useful. But when as in a neighbouring county, false honors hover round the head of vice, and are prostituted to the destruction of that equality of rights, inherent in the very nature of men, leaving in civil society only two ranks of human beings, the great and little, (as if the latter were born only for the former) the heart of goodness and generosity must swell with delight at hearing of their downfall.

We thus premise on the part of Mr. Perry, because no tinsel imposed by the corrupt and corrupting hands of man hath ever ornamented the heads of his ancestors or his own. He glories in their industry and integrity as commoners. He reveres the fatherly goodness of his Sire for having thrown him in the way of a liberal education, and regularly bred him to the gentlemanly profession of a Surgeon in the second commercial city in the kingdom, where it is well known he conducted himself with honor, and for some time before his marriage with Miss Clerke, kept a house under the superintendence of a sister, with credit and reputation.

In this situation it was with a heart tremblingly alive all o'er he first saw the sole object of his wishes—the full fruition of all—all the happiness he can possibly know—his wife. It was in her walks with her school-mates, and as if the God of Nature by an exercise of a particular providence had directed their steps contrary to its general and immutable laws, their eyes met in attractive, and with a kind of electric fire shook them to their souls.—On her part the piercing darts of love seducing
 charms

charms—the subtle melting energy of smiles—the irrefragable twinkling of two seraphic orbs, playing under the bewitching colour of heavenly blue, and spotless white—in a face too which for harmony of cast exceeded the description of Sophia in the matchless Novel of Tom Jones, fixed him as a needle to the magnet. To clear himself from this her fatal influence he found impossible. As well might he have attempted to quench the fire of sympathy; reform the works of an unerring God; give second birth to nature; or unite the poles. As to himself he was convinced every time her eyes, the tell-tales of the heart, directed their penetrating beams upon him, that he was in her favor. He contrived to make himself known to her for whom and what he really was. She instantly accepted him, and gratified the depth of his feelings by the ardor and sincerity of her own. But she paced in the tramels of a school, and what could be done to escape from it was the question. She was the daughter of a very worthy man at Bamf, in Scotland, who in the Chancery proceedings is called a shoemaker. Her mother is sister to the late Mr. Ogilvie, who began the world as a mason; but after amassing by his uncommon skill a large fortune in Jamaica, he retired to that part of Great Britain where he first adopted her brother as successor to it, and ultimately herself.

In February after his death Mr. and Mrs. Perry first saw and mutually affected each other by the sweet, but indelible passion of love. Thro' the medium of a woman servant they woo'd. They conversed on paper, and concurrently adopted the mode of her elopement, which has so happily succeeded.

This

This is the whole of his crime, which on discovery caused the clouds to look black, the winds to whistle, the rain to fall, the thunder roar, and chaos to come again. But wonderous pitiful as the tale of their pursuers was, no one was induced, even for a large reward, to apprehend them, because having broken no law, either of God or man, but on the contrary complied with the law of each, of nature and civil society, the idle suspicions of their enemies were either unheeded as ridiculous, or condemned for insanity.

If there be a man existing who detests the crime of force in marriage; or what by our laws is called forcible abduction, more than another, it is Mr. Perry. In magnitude of offence it is coupled with that of rape, and it is in its nature of higher degree. A woman who unfortunately happens to be the object of the latter, if wife, prefers her silence to revenge. She forgives a violence her own personal attractions excited, lamenting that she and her assailant had ever met. She conceals it for the sake of her future character, and she chooses not to sacrifice it by prosecuting her ravisher to conviction and death, which cannot cleanse him of his imputed guilt, or repair the injury she has received. This crime, and also of forcible abduction is now scarce ever heard of. The improved good sense of men make them scorn to satisfy passion by force, which can only be enjoyed by the yielding of compliance. Is it possible that a man who reserves a freedom to himself should violently wrest it from another! It may be so in some cases, but seldom in the affairs of love. Whoever studies this passion must know it delights in mutual liberty; and no man, who is
a friend

a friend to the fair sex, ever thought of forcing them to a concession of what the one would not in a state of restraint be capable to bestow, or the other receive. Violence is as offensive to the sensations of love, as it is to society; and what among gentlemen is almost unheard of, because seduction is much more effectual than force, and bears no comparison in the measure of the crime.

Of forcible abduction it must be allowed that the same apology cannot be made for it, as in general cases for a rape, because it is more deliberate, always self-interested, and has not the lambent fire of passion to plead in its extenuation.

In regard to Mr. and Mrs. Perry nothing of all this applies. They were governed by the freedom of their will. Had she been impelled by force, she would have been relieved. She travelled thro' a rich and populous country more than three hundred miles at her full liberty, and from the door of Mr. Perry's house to Gretna Green, was able to raise assistance by her screams. She was silent and happy. If she has been at all affected since her marriage, it has been at the behaviour of her husband's prosecutors, some of whom in their application to the court of Chancery, losing sight of their own characters, have so far forgotten what was due to her as to say, "she has lost her regard to truth since she knew Mr. Perry, and was little better than half witted."—Thus dignifying her with the high sounding names of a *lyar* and a *fool*. Thank you good folks. If ye can find an excuse for yourselves for this, it is a nostrum in morals, unknown to the board of Longitude, or any other.

Here

Here we will rest upon our arms, and address ourselves to you on the supposed indecorum of a clandestine marriage. It has been asked, and the question comes from various worthy characters in Bristol, what must a fond, and perhaps doting parent feel at the elopement, and such an elopement as that of Mrs. Perry from a school, where she was placed by those who aimed to accomplish her for the enjoyment of their property, when they should be no more? This is a close, a heart rending question; and the answer is familiar, that their feelings must be exquisite. But when it is made manifest that the plan of this elopement is adopted, and embraced by the young lady, whether our daughter or our niece; surely it must abate our abhorrence, and tho' we may condemn *her* for indiscretion, we must lessen our censure on her husband; who if possessed of a good heart, like Mr. Perry, of amiable life, with the manners of a gentleman, will call forth our kindness and compel our approbation more especially so, when it is notorious that he truly loves her; treats her with all possible affection; and as a good and sensible man, does honor to her choice.

In a word, leaving our comments on his trial for a separate chapter to follow it, we here must introduce to the candid reader the trial itself. It was in the face of the public, and as the victim is led to their altar, they must be the priests and make the offering.

The TRIAL, &c.

THE Jury being sworn, after four or five private challenges, RICHARD VINING PERRY, Esq. was brought to the Bar, attended by his Attornies, Messrs. HEARNE and PEARCE, late Under Sheriffs for the city of London and county of Middlesex, Mrs. PERRY's brother, and several respectable gentlemen.

The Indictment against him, as read by Mr. LEWIS, the Clerk of the Arraignment, contained three Counts.—*The first*, charged him with forcibly carrying away from the house of Miss MILLS, on the 19th day of March, 1791, CLEMENTINA CLERKE, she being then under the age of 16 years; and having lands, goods, substance, and chattles.—*The second*, for so taking her and marrying her against her consent, and the *third*, for so taking and marrying her for lucre thereof; contrary to the form of the statute in that case made and provided, in the 3d year of the reign of King Henry the 7th, chapter the 2d.

The

The prisoner, who was delivered over by Mr. Ives, the keeper of the prison for the county of Surry, by virtue of a habeas corpus, directed to the keeper of the prison for the city of Bristol, pleaded to his indictment, "*Not Guilty*;" and being asked how he would be tried, he answered, "*By God and his country.*"

Mr. GRIFFITHS opened the indictment to the jury, when Mr. BOND addressed them thus :---

" Mr. Recorder and Gentlemen of the Jury, on any other occasion than the present, I should have been surprized to have seen so crouded a court; but in a case of so serious a nature. as that which I shall submit to your judgment, and the consideration of the gentlemen before you, I own I am not surprized at all, at the curiosity that hath been very naturally raised in the minds of the inhabitants of this opulent city; and gentlemen, I should not discharge my duty as leading council for this prosecution, if I did not in the first place assure you, as I now sincerely do, that my mind is entirely divested of prejudice, as much as I hope is the case with you. For gentlemen, as we come here for the ends of public justice, it is incumbent on us to expel from our consideration every thing but what shall be adduced by the solemn testimony of creditable witnesses. It is the question now before you;
and

and not what you may have heard abroad that calls for your decision; and you are either to fasten guilt on the criminal, or acquit the innocent. What shall we say of him who not only takes away the property, but the child of a worthy family, by contrivances as singular as, according to my instructions, they are offensive to good order and regularity? Yet, God forbid that any attention should be paid to me for this question, unsupported by the strongest evidence, and however I may appear to feel indignantly on my contemplating the crime now brought against the prisoner at the bar, it is not gentlemen, it is not my own feelings I expose to you, but the feelings of the prosecutors, who have no other view than to bring an offender to justice, under the sanction of the court of chancery. In the commencement of this business, Miss MILLS was the avowed prosecutrix; but in consequence of her application to that court which countenanced her proceedings, the executors of the young lady's uncle, under whose will she is entitled to very large property, became the real ones; because she has been ordered to have her expenses paid her out of this property itself. Gentlemen it is not the business of this or any other court to prejudge. Facts are enough to call for a careful investigation, and to shew you these I will read you the statute of Henry 7th, on which the prisoner stands accused.

B

“ Any

4. Any person who shall for lucre forcibly
 “ take away any woman being maid, wife,
 “ or widow, having substance in goods or
 “ lands, or being heir apparent to her an-
 “ cestors, contrary to her will ; and shall
 “ afterwards marry her, or by his consent
 “ to another, or shall defile her, his abet-
 “ tors and procurers, and such as know-
 “ ingly receive such woman, shall be
 “ deemed principal felons.”

Now Gentlemen, you are to observe, that there are three requisites necessary to be proved, in order to establish the crime charged in the indictment. 1. The forcible taking away the young Lady. 2. Marrying her contrary to her will. 3. And that this was for lucre. To this end I will state to you as correctly as I can from my instructions, that Miss CLERKE was the daughter of JAMES CLERKE and ISABELLA OGILVIE, she was born in 1776, and was at the time she was taken away about 14 years and 11 months old.— Mr. OGILVIE her uncle, having no children of his own, turned his thoughts towards his sister CLERKE, who had a son and daughter ; the latter of whom at about 10 years old, he placed at his own expence with Miss MOORE, the predecessor of Miss MILLS, in Bristol. Mr. GORDON, of this city, was requested to pay her bills by Mr. Ogilvie, who died the 23d Jan. 1791, and by his will

will dated the 1st day of August, after giving away an annuity of 20l. and 300l. he devised all his estates in Jamaica to his nephew; but afterwards from private motives he devised the whole to his niece Miss Clementina Clerke.

Soon after his death, Gentlemen, and I am very sorry to say it, because it was certainly very improper; Mr. Gordon, on his receiving the intelligence of this event, and the large property that had devolved to this young Lady, was so highly imprudent as to state the particulars by reading them in a public Coffee-house, surrounded by a variety of gentlemen of all descriptions, in the front of the Exchange of this great place.

From this moment the plot, the dark plot was formed and meditated by the prisoner at the bar, for carrying off this innocent and unsuspecting lady, on the 19th day of March, 1791. For the completion of this deed Elizabeth Baker, a woman servant who had lived 14 months with Miss Mills, was seduced from her house on the day before, and never returned. By mere accident her sister went to the prisoner's house, where he carried on the business of Surgeon and Apothecary, by Stoke's-Croft. MR. PERRY told her he did not know her sister, but that a short thick woman had been there the day before. Gentlemen, about four

o'clock in the afternoon a note was brought to MISS MILLS by a servant in livery, with a chaise. This is the Note —

“ WILLIAM GORDON's compliments to MISS
 “ MILLS requests she will send MISS CLERKE in
 “ his Chaise to his house, as a relation of hers is just
 “ arrived there, and wishes to see her.”

MISS MILLS accordingly sent MISS CLERKE in the chaise. She seemed very indifferent on the occasion. And I think it surprising, if not impossible that she could be concerned in so dark a plot; because at that time, I do not mean to be impolite or disrespectful to a lady, she was only a child in point of understanding---of a mild flexible disposition; insensible to all the arts of intrigue --- meek and unforward. Besides Gentlemen, the news of her Father's and her Uncle's death had depressed her spirits. She was ill, and therefore could not know any thing of this plot of the prisoner's. She discovered no joy on seeing Mr. Gordon's note, and was perfectly unmoved. She asked Miss Mills to go with her.--- Mr. Perry was totally unknown to her. --- When she was gone no traces were found of this plot. She was set down in Infirmary-Street, near Mr. Perry's house, to which she walked. A Post Coach was waiting at Stoke's-Croft turnpike, and after a considerable time drew up to Mr. Perry's door.

door. Mr. Perry made his appearance about 11 o'clock, and he and Miss Clerke, with Betty Baker, the servant, who are kept out of our reach, with two others, were conducted to Newport, 18 miles from hence, and the road to Gloucester. Miss Clerke was then taken a journey of more than 300 miles ; and at Gretna-Green went thro' the cold ceremony of a marriage with the prisoner, by a priest totally subdued in body and mind. The parties and the young lady's friends were in a deplorable state. No note had been written by Mr. Gordon --- Miss Mills, now Mrs. Thatcher, discovering that she had been at Mr. Perry's, and taken away with him to Scotland, pursued them there, and on Cumberland-Common she met them. On seeing Miss Clerke, she called out, Miss Clerke, for God's sake Miss Clerke let me speak to you ; when Mr. Perry put himself out of his coach window and said no such person is here. Mrs. Perry is here if you please --- drive on boys. Miss Mills returned to Bristol, and the prisoner and Miss Clerke went to London, where rewards were offered for their apprehension. They afterwards went on the Continent, returned into Kent about 1 year and a half ago, and were taken, on this indictment some time in May last. Gentlemen it is not my intention to call the lady herself, finding she is reconciled to Mr. Perry ; I will spare her the alternative of

speaking in his favor through affection, and perhaps going further than might be altogether correct. Every material Witness is removed from us. Betty Baker, and Samuels, the apprentice are kept out of our way.

Gentlemen, let me here call your attention back to the statute of Henry VII. which makes the carrying away by force, the crime in question. It is enough for me to say the young Lady was so taken, and what ever her feelings might or may be, the public are interested in this monstrous species of plunder. Yet I desire you will divest yourselves of every species of prejudice, hear the evidence that will be offered to you with caution, and if the prisoner be guilty, find him so. If not, depend on it, I and the prosecutors who have no vengeance to gratify, will rejoice in his acquittal; before a Gentleman, your worthy Recorder, whom you have lately chosen to that seat; a Gentleman whose learning as a scholar, a lawyer, and a man, must do honour to his station and to your election.

The probate of the will of Mr. Ogilvie, Miss Clerke's uncle, was now produced.

Mr. ERSKINE. As we are here I believe for form sake, we'll admit the will and give as little trouble

trouble as possible ; Sir John Wedderburn and Andrew Stewart, are the executors of the codicil, but neither will nor codicil proves the maker to have the property. It should be proved.

Mr. MOLCOMBE. I knew the late Mr. Ogilvie very well. He had large property in Jamaica and Scotland.

Barbara Ogilvie.

Q. By Mr. LENS. What relation are you to Miss Clerke ?

A. I married her uncle the late Mr. Ogilvie.

Q. How long had you known her before she went to Miss Moore's ?

A. About 4 months.

Q. What age was she then ?

A. Ten years old.

Q. Are you certain of that ?

A. I speak from report only.

Mr. ERSKINE. You must speak positively.—
It is essential as to the indictment,

Mr. RECORDER. The age is material.

Mr. LENS. We will give the best evidence we can, we can do no more. He then read a
case,

case, *The King v. Earfwell*, from his note-book, to shew that proof by report or repute is admissible, but it was over ruled as to the present, for want of analogy.

Mr. BOND. I do not think precise evidence necessary.

Mr. ERSKINE. I came here to hear substantial proofs and not presumptive ; I shall take care to admit nothing against the prisoner's innocence.

Mr. BOND produced the certificate.

George Stewart. I obtained it from the Registry at Bamf, of the Sessions-clerk, it is dated 29 April, 1776.

Mrs. Ogilvie.

Q. Whose daughter is Miss Clerke ?

A. She is the daughter of Isabella Ogilvie.

Q. You conducted her to Bristol.

A. Yes Sir, I left her there.

Q. Who paid her bills there ?

A. My husband, Mr. Ogilvie.

Q. When did he die ?

A. In January, 1791.

Q. When did Mrs. Perry's father die ?

A. In February following.

Q. Do you know W. Gordon ?

A. I have seen him.

Q. Selina

Q. Selina Mills, You keep a Boarding-School.

A. I do in Bristol.

Q. You succeeded Miss More?

A. I did.

Q. How long was Miss Clerke with you?

A. About a year and a quarter.

Q. What kind of young lady did she appear to be?

A. I thought her amiable, modest and obliging, timid and not forward. She heard of the death of her father by a letter which I opened, she was very much agitated. and we gave her egg and wine.

Q. In what state of mind was she when she went from your house to Mr. Gordon's? Did she believe she was going there?

Mr. ERSKINE. When I recollect the question to be decided this day, I am astonished at such an offer of evidence, I protest against it sir, as it may effect you, me, and all of us. The charge is for taking away a lady under 16, against her will. Now sir, when a man is in a cause of blood it is necessary to come to the point, and tho' I cannot have the honor to address the jury, I will, I must stop here, and express my abhorrence of an attempt to set up a sort of *secondary* evidence, and to resist the primary—to stop the mouth

mouth of the only person who can testify the fact of force or no force, Mrs. Perry herself; who is to sit here a mute to hear such evidence go to the jury, with the possibility of producing the ignominious death of her innocent husband, to be followed up by her own, by means of a broken heart, with that of an unborn infant and a living sister you have seen in court. *Timeo Danaos ferentes*. My learned friend Mr. Bond, whom no man can esteem more than myself, for his learning, eloquence and abilities, has been pleased to shew some sympathy by Mrs. Perry. Because she is, what she always has been, reconciled to her husband, he spares to examine her on suspicions that do her no honor. I reject that sympathy while I was obliged to drop my pen on hearing him speak of it, and apply my rejection of it to his conscience; as being too preposterous to be compared to his *usual* sympathy. Nothing from this witness can be heard about the stratagem of taking the lady away, if it tend to induce the jury to believe a continued force was practiced on her by Mr. Perry. Whether the taking was by consent, or by the prisoner and Elizabeth Baker, is a distinction that will prevent a decision, and were it necessary to establish a precedent, I shall hear it laid down from you sir, in a cause like this which has arisen in a large commercial town, that no constructive evidence

dence can be admitted ; while positive evidence can be adduced. In arguing before you, I must tell you that the great Sir Michael Foster lays it down that no felony shall be proved constructively. In murder what falls from the dying party is good, because when he is dead, no other evidence can be better, and you establish the cause of the death. Is it so here? Who is the prosecutor?

MR. BOND. Really Mr. Erskine I think this is going out of the business.

MR. ERSKINE. I think not --- to vindicate whose wrongs. Miss Mills or Mr. Perry's?

MR. BOND. I do contend nothing can be proved by Mrs. Perry.

MR. ERSKINE. In criminal cases it is right to argue every point in favor of the prisoner. — I tremble to think of such evidence; it is dangerous to the last degree. It is true Mrs. Perry might ask Miss Mills to go in the chaise with her; but is a man to be convicted upon it? The fact and the *animus* must be known before this. What is the object — a boarding school. The indictment is vindictive, and the lady by my side, covered by anxiety, but supported by the assurance of her fond husband's acquittal, sitting like patience on a monument smiling at grief, gives the lie direct to the whole. Is not this lady competent? Can my learned friend set up the anomaly of giving
secondary

secondary evidence against the primary. Let him look into Gilbert on the subject and learn his error. It is matchless effrontery in a woman to come here, and state, in Mrs. Perry's presence her own thoughts that that lady must have been taken away by force, and therefore I think it right to call on my friends the other side the court, to say at once whether they will admit the evidence of Mrs. Perry.

MR. BOND. No.

MR. ERSKINE. My argument then tends to prove her competency. As to this a subsequent marriage is not to be spoken of. If the abduction were against her consent the prisoner is guilty. The indictment charges a public wrong and a wife cannot be examined *against* her husband unless he has been guilty of it towards her. If not she shall be so *for* him. Where evidence precedes the marriage, she may put an end to it, by the hands of the law. In former cases when the great Lord Hale threw out a doubt, he said, the wife is a witness, not only *against* but *for* her husband, whether *de facto* or *de jure*. When her wrongs are at stake, she shall exonerate him. Yet in spite of this my good friend, for the prosecution courageously tells me she shall not be heard—she shall not speak—they will impose eternal silence on her—her husband shall be murdered—she shall be a widow, with an orphan
infant

infant—advanced herself in her pregnancy of another. Shall my learned friend decide when he only has been heard. Mr. Perry has done nothing against the King; but according to my learned friend, every thing against Mrs. Perry, who has heard indignantly all he has advanced. Good God! Sir, we are not before a revolutionary tribunal, where men madly sport with human blood, and drench it with a savage thirst; but before you, in justice and mercy, as qualified by principles of moral obligation, humanity, given law, and legal evidence. The first evidence the jury is entitled to, and not the second. I confess, Gentlemen, my sensibility is wounded, by my learned friend on the other side; who has so compleatly endeavored to hem us out of a hearing, that he has not left us a chink, through which we are to sound our voices, to the tribunal of common sense (here Erskine for ever) but as reason and law are never to be divorced; I trust he must be unsuccessful, and his instructions be overwhelmed with shame.

MR. RECORDER. The whole question has been made on the admission of this lady's evidence.

MR. FIELDING. I see the observations of my learned Friend, Erskine, in so clear a light that I cannot do less than second them, with all my might.

MR.

MR. RECORDER. It is absolutely necessary, that strict rules of evidence be observed.

MR. ERSKINE. I mean to establish the competency.

MR. BOND. I am sorry to say that Mr. Erskine has gone into a great deal of irrelevant matter, all he has said on the competency of Mrs. Perry's evidence is premature. It is time enough to argue it when she is offered.

MR. FIELDING. I had conceived my friend Bond had most ably allowed the competency of Mrs. Perry. He stated the point as an alternative. Should I call her he said, her evidence would go to send her husband the sacred object of her heart to death, or by her perjury to screen him from punishment. What does my friend want? We will stifle her testimony in order to draw inferences from others, to convict her husband. He begs the question in every shape, I look upon all she can say as a fact, and can my learned friend Bond, look upon any thing she can say, with common respect and refuse her? Will he infer guilt and not prove it? Is the prisoner to die and his wife of a broken heart? To prevent this, why not admit her directly? Sure I am, no two men will rejoice more than Mr. Erskine and myself, either at the establishment of guilt where guilt is to be found, or innocence be made known.

MR.

Mr. MILLS. I really think with Mr. Fielding on the whole he has said, and cannot suppose that declarations of what Mrs. Perry said will be admitted. Mr. Lens said, it is a sentence coupled with another observation, it goes to affect the life of Mr. Perry. Where will my learned friend end? Has Miss Mills any thing to say, and shall Mrs. Perry not be heard? She is competent, and if I am right in this, I am sure my learned friends opposite me will concede. As to competency it has been said that there was force to the marriage---that is, she was married by force; the law is, that she is a witness against her husband. The wrong is done to her, and its reparation is material to her. Hale distinguishes a marriage *de jure*. If per force she may annul it. The case of Lord Audley, 7 James 1. is in point and my Lord Hale has shewn it, Mrs. Perry is ready to give evidence, Miss Mills has given us evidence on information. All the cases in the books shew that the conviction of the men was grounded on the evidence of the women; and can I turn round to this lady with tears in my eyes, and not lament that she, the only witness that can prove the fact, shall be precluded from speaking it. No Sir, and I think I see such solid sense and law in your countenance that will repel every objection to it, and that you will hear her evidence.

Mr.

Mr. BOND. Tho' no man feels more delicately than I do the candid compliments of my friends; I am not so great a dupe as to be flattered out of the little understanding I possess, or like another Gil Blas, to be deprived of my purse and a good supper by the adulation of a stranger. I complain that I have been misrepresented. I did say I would not call Mrs. Perry. In the cases spoken to there were peculiar positive proofs of force. If my learned friend wishes it, I'll state why I will not call Mrs. Perry. I could not call her to prove the force. As to her competence I cannot follow the eloquence of the other side. I do not feel it necessary. If Mrs. Perry is competent, then the thoughts and hearsay of Miss Mills cannot be admitted; but surely an incompetent witness on oath is more to be believed than if she were not on oath. I insist that what Miss Mills says is the best evidence. Miss Clerke expressed herself to her as is sworn, and therefore I contend that Miss Mills's evidence is admissible.

Mr. LENS. The question here is whether Mrs. Perry is a competent evidence or not. If she were married to Mr. Perry with her consent, she is his wife *de jure*, and as such she cannot possibly be admitted as a witness *for* him. It may be she is his willing wife, but the truth of that fact cannot be proved by her. The jury are to say whether

ther there were a consent or not, as there cannot possibly be any inferences drawn from facts.

Mr. GRIFFITHS. It has given me great pleasure to hear what Mr. LENS has said; as it has always been my opinion that a wife *de jure* can never be a witness for her husband. Lord Hale I believe has denied Lord Audley's case to be law, and in this I submit it is immaterial whether the lady in the present is a wife *de facto* or otherwise. She is incompetent on the part of her husband, and ought not to be admitted.

Mr. ERSKINE in reply. If there ever was a case in which the public interest was more engaged, it is the present, and a regard for that interest makes me tremble at the speeches I have heard. They tell you that my objections come too soon. They may as well offer you all the thoughts of all the servants in Miss Mills's house, as the idle surmises of Miss Mills herself. The opening in this particular was as wild as any in the Arabian Nights Tales. Mrs. Perry is the object of force, yet you will not hear her on the subject.

There must be an *animus* attendant on the fact; and it is absurd in the extreme, to stop preliminary evidence. What a person said is a fact. Suppose an officer, clothed with legal authority, is detained against his will. This is coupled with

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the

the fact of imprisonment. Suppose the officer asked another, will you go with me. Here the fact and the *animus* are joined; but the question to Miss Mills, leaves it open to an inference without a fact. Independently of this, it does not deserve the name of evidence. In the case of murder, what the murdered party said is evidence, for the reasons I before submitted. It would be your duty to explain this, to the jury. They would not surprise you. They argue, that because you, the Recorder, are learned enough not to be impressed by it; they are zealous to impose it fruitlessly, on your attention. Were it part of an overt act, it would be admissible. Once more, Is she competent or not? I say she is, and she ought to be immediately heard, to blow up the prosecution. They have told us, they mean to offer a priest, to come and flutify himself, by saying, that he was subdued in body and mind, at the time he solemnized a cold ceremony of marriage, between Mr. and Mrs. Perry. But admitting, what most certainly is not true, force, the cold ceremony of marriage, was performed in the cold country of Scotland, a distinct and independent kingdom, and out of the reach of an Act of Parliament, passed in the reign of Henry the VII.

Mr.

Mr. Griffiths hath said, that Lord Hale denied the case of Lord Audley to be law ; but if he will look at the case, he will find the declaration and the overt act were coupled. The essence of the crime, as in a rape, must be proved by the woman. Lord Audley suffered on the evidence of his wife. Could you leave the thoughts of Miss Mills to the jury; it would be a snare to their consciences ; and they might execute a penal law, on the husband ; because the mouth of his wife was stopped. What are we arguing about ? Mark the horrid proposition. We will have, say the other side, a blind inference, drawn from a dark construction. I do not assume to criticise on Lord Hale, who, if alive, would give us a commentary, on what has passed to day. I should alter, and explain, what you are to take as law, and what you are not. In the case of violent ill treatment, of a lady, by her husband, she is a witness *against* him, before the magistrate. She is always admitted to swear to the facts. If not, preventive justice would be defeated : murder ensue, and punishing justice deprive the community of two of its members, instead of neither. Here she is a wife *de jure* ; and that tale of a sentence, in Hale, is inapplicable. Will the Gentlemen say, they will reject Mrs. Perry, because she will acquit her husband ? No. Yet they strive to throw in my way the marriage contract. The anomaly of

the cases destroys half the rule. She is allowed to be her own mistress before the magistrate, but not here, as a wife *de jure*. If I call her, she releases her husband. If she must not speak, and Miss Mills's evidence be admitted, his death may follow. This is taking one half the rule, and leaving alone the other. Preposterous indeed !

Mr. RECORDER. I think it is proper to hear the evidence as to the one question, what state of mind Miss Clerke was in when she was going into the chaise ; and the other, whether she asked Mills to go along with her. A great deal has, to be sure, been said that does not immediately relate to the cause.

Q. Miss Mills. What passed the day Miss Clerke went away ?

A. Her spirits were very low, and she said the news of her father and uncle's death so soon together was too much for her. She complained much of the head ach.

Q. What time did she go away ?

A. About half an hour after four o'clock in the afternoon. I saw the chaise at my door. The blinds were drawn up. A servant in livery delivered me a note. She was to go, I understood, to Mrs. Ogilvie her aunt. She was quite unprepared, but said she would be very glad to see her aunt, tho' she did not expect it. She asked me to

go with her; I said I should like it much. She then said, Miss Mary will you go with me? But I and my sister declined it, having some domestic concerns to look to. Miss Clerke then came down stairs, and I said I would go in the carriage with her, but I feared Mr. Gordon would esteem it a liberty. She said good bye, and went into the chaise.

Q. About what time was this?

A. A little after five. Betty Baker left me the day before between four and five.

Q. Did she ever return?

A. Never. She left all her clothes behind her, and a quarter's wages.

Q. Did Miss Clerke ever hear of Mr. Perry?

A. I do not know she ever did. She went occasionally to Mr. Gordon's.

Cross examined by Mr. ERSKINE.

Q. You seem amused; it would be better if you would bring the muscles of your face to a little gravity. When Miss Clerke asked you to go with her, did you intend going?

A. I thought of going.

Q. Do not speak before you think.

A. I had, I believe, two reasons for not going. Something to do in the family, and my enquiries after Betty Baker.

Q. You attend to the morals and religious principles of your scholars?

A. I do fir. Miss Clerke was very moral and good.
Here she smiled.

MR. ERSKINE. Pray Madam be ferious, and don't give your evidence with the levity of a witness who comes forward in a cause of about 5l. instead of the life of a man.

MR. BOND. Pray Mr. Erskine, let the lady go on. She gives her evidence very decently.

A. I did not laugh.

I saw you; but I see I shall be too much for you, and therefore I spare you.

William Gordon.

Q. Have you seen this note? A. I have.

Q. Is it of your hand writing? A. It is not.

Q. Had you any acquaintance with Mr. Ogilvie?

A. None.

Q. Did you on hearing of his death say any thing about him in a Coffee-house?

MR. ERSKINE. Don't ask him this question. It is unnecessary.

John Jones.

Q. What are you? A. A Postilion.

Q. You was Postilion at the White-Hart, Inn, Bristol?——A. Yes.

Q. Were you employed to drive a post-coach to Mr. Perry's

A. I was sent with a post-coach and 4 horses to Stoke's Croft turnpike, where I staid an hour and an half. I then turned back, when some man
called

called to me by the Full Moon, to take up at Mr. Perry's, I drove to his door, and in about a minute a lady came out and got into the carriage first.

Q. How many persons came out ?

A. Two ladies and three gentlemen ; Mr. Perry and Mr. Baynton were two, the others I did not know.

Q. Where did you drive to ?

A. To Newport, 18 miles.

Q. Did they change horses there ?

A. They did and never got out of the coach, I saw it go off with them all, the next stage to Gloucester.

Cross examined by Mr. FIELDING.

Here Honeſty, you drove the lady and gentlemen the firſt ſtage, to Newport, did you ?

A. I did.

Q. You ſaw them all get into a coach, from Mr. Perry's houſe ?

A. Yes Sir, I did.

Q. They went very quietly ?

A. Very quietly.

Q. Pray how did they appear ?

A. Very happy and chearful.

Q. All very happy and chearful, going helter ſkelter to Scotland ?

A. Juſt ſo, Sir.

Very well ſaid, Honeſty.

Joseph Paisley, the Gretna Green Priest, drunk.

Mr. BOND. *Q.* Where do you live?

A. I live at Gretna Green,

Q. Do you remember marrying Mr. and Mrs. Perry?

A. Yes, about three years ago, it was in March 1791, I think.

Q. What week-day was it?

A. I know not. Here is the certificate.

Q. Who filled it up?

A. Mr. Perry.

Q. Did he write the names?

A. Yes, his own name and Miss Clerke's.

Q. How did they appear in your house?

A. Like other people. They had been overturned in their carriage, and their heads were bound up for the hurt they had received.

Q. Did the lady appear chearful?

A. She appeared to be ill, but I saw nothing amiss in her or Mr. Perry, except that they were hurt by their fall.

Here Mr. Lowton, the Attorney for the prosecution, said, that this man of God did not make use of these words.—When

Mr. FIELDING rose. How dare you Sir, say any thing, I heard him myself, and my friend DAWES has taken down the words.

Mr. Lowton. Mr. Dawes wrote the words but just now.

Mr.

Mr. FIELDING. He could not write them before the man uttered them.

Mr. DAWES. I took them both ways as they fell from the lips of the witnesses, in order that I might have the trial correct.

Q. What was their behaviour?

A. They behaved well enough,

Q. How long is your marriage ceremony; long or short?

A. O very short; not long at all.

Mr. ERSKINE. I shall ask him no questions.

Mr. FIELDING. As we have done with this *Reverend* Gentleman, he may make room for another witness.

Mary Thatcher.

Mr. LENS. Q. Mrs. Thatcher you were formerly Miss Mills. Did you go to Mr. Gordon's after Miss Clerke?

A. Yes sir I did.

Q. Did you find her there?

A. No sir, she had not been there at all.

Q. You went to Scotland?

A. The instant I traced her to Mr. Perry's and found they were gone off in a coach and four—I pursued them.

Q. Who went with you?

A. Mr. Weeks of the Bush Tavern, and my younger brother of about seventeen years old.

Q. Did you overtake them?

A.

A. No sir, I met a coach returning I believe on Cumberland Common about the middle of the day. There were four persons in it. I knew Miss Clerke, Betty Baker, and Mr. Perry. Mr. Perry and Miss Clerke sat on one side, Betty Baker and a gentleman on the other. I called out stop. For God's sake let me speak to Miss Clerke. Mr. Perry jumped up from his seat and held a pistol to my face. He said there is no Miss Clerke here, but Mrs. Perry is. I desired to speak a word with her; Mr. Weeks and my brother were with me. Mr. Weeks said,—Perry let Miss Mills speak one word with her. No, replied Mr. Perry, not a word by God—drive on. The road where we met was narrow; we could not turn round, but were obliged to go contrary ways. I came back to Bristol. I had no acquaintance with Mr. Perry whatever.

Q. Had you any reason to believe that he and Miss Clerke ever knew one another before?

A. I had none at all.

Q. Did you pursue them else where?

A. Yes Sir, I went into Flanders after them.

Mr. ERSKINE. I shall not cross examine her.

Mary Baker (Betty Baker's sister) fainted away, whether from illness or fright is not known, and she was carried out of Court in a fit. She was called to prove that Mr. Perry denied that her sister was in his house.

Mr.

MR. BOND. We here close our evidence on the part of the prosecution.

MR. ERSKINE. There is yet a question undecided, and had we been all silent, I am sure your judgment would have directed you to resist the preposterous shabby arguments, offered on the other side. With regard to calling Mrs. Perry; I say, after what I have heard, that it is not the privilege of Cæsar's wife to be unsuspected; but of yours, of mine and of all of us—it is the privilege of every man, to defend the innocent; and sure as I am of the competency of that lady, I call her to be heard.

MR. BOND. I should be very sorry to sport with the time of the court; but after all, I have heard, and I have heard a great deal too much. I should not do my duty, to my Clients, if I did not object to the evidence of Mrs. Perry. It is now in proof, before you, that Mrs. Perry is a wife *de jure*; and as she cannot, in her covert character, be a witness against him, leaving alone the case of her swearing the peace, when in danger of her life, by him, which is not analogous, I do contend she cannot be a witness for him. And as she can neither be a witness one way or the other, it is improper to call her. I do admit I declined it on the part of the prosecution. Had she been a wife *de facto*, I conceive the contrary doctrine would prevail; but being a wife *de jure*,
I say,

I say, she cannot be heard at all, and that we have a right to give the best evidence we can, to the jury, of the forcible taking away, independently of any thing she knows ; and that the jury only, have a right to make what use of it, under the directions of the Recorder, they shall think proper.

MR. RECORDER. I think in every shape this question comes before me, Mrs. Perry is a competent witness. You charge a force on her by Mr. Perry, and if she be a witness against him, surely she can be a witness for him. The forcible taking away, without a forcible marriage, is not felony. If you get rid of one half the rule, you get rid of the other. Who can shew the force, but Mrs. Perry ? Then she must be admitted a witness, to get rid of the imputed guilt. The doctrine is commutable, therefore, let her be heard. Here a loud cry, from above a thousand people, huzza, Perry for ever !

Mrs. Perry, by Mr. Erskine.

Q. You left Miss Mills's school, about the 19 March, 1791 ?

A. Yes sir.

Q. A chaise came for you, in the name of Mr. Gordon ?

A. It did sir.

Q. Did you believe you was going to Mr. Gordon's house ?

A.

A. I knew who sent the chaise, and where I was going.

Q. In the face of God, did you know Mr. Perry sent it, and that you was going to his house?

A. Yes, sir, I knew it very well. It was settled, between Mr. Perry and me. Betty Baker was there before me, waiting till I came. It was by my desire.

Q. Had you ever seen Mr. Perry before?

A. Yes sir, frequently, and imagined he had conceived an affection for me.

Q. Did you believe it was for lucre he made himself known to you?

A. No sir, I do not think it was for lucre, but out of affection for me.

Q. How was the plan of your going away formed, and by whom?

A. It was formed by Mr. Perry, who proposed it to me by letters, in the manner we carried it afterwards into execution.

Q. You received letters from Mr. Perry?

A. Yes sir, two, thro' the medium of a servant.

Q. Did Miss Mills ask you whether she should go with you in the chaise, or you ask her?

A. She asked me herself, and I said yes, to avoid suspicion.

Q. Where was you set down?

A. In Infirmary Street, and I walked to Mr.

Perry's

Perry's house. I saw Betty Baker in the window, and then knocked at the door.

Q. Did you know where you was going?

A. Yes sir, perfectly well. I knew I was going to Gretna-Green, to be married to Mr. Perry, thro' the medium of Betty Baker.

Q. In the face of God, how long before had you seen Mr. Perry?

A. About a month.

Q. Did you consent, all along to go away with Mr. Perry, and with him to Scotland?

A. I did.

Q. Have you been all along satisfied?

A. Perfectly so in every respect.

Q. Have you had opportunities to quit him if you thought fit?

A. I have always; but I never once wished to leave Mr. Perry.

Cross examined by Mr. BOND.

Q. How long were you acquainted with Mr. Perry, before you left Miss Mills?

A. About a month before.

Q. Where did you first see him?

A. In our walks to the Down. I had seen him several times. I thought he had conceived an affection for me.

Mr. ERSKINE. I really think she has given very satisfactory evidence, and hoped, Mr. Bond,
you

you would have avoided asking her any other questions. It is immaterial how or where she became acquainted with Mr. Perry.

Mr. BOND. Good God! Mr. Erskine why do you interrupt me. I did not interrupt you. I have a right as Counsel for this prosecution to act and I will act according to my judgment.

Mr. FIELDING. Don't be angry my dear Nat, Mr. Erskine cannot help speaking but from his feelings.

Q. You say Madam, you frequently saw him?

A. Yes Sir, he frequently stopt and looked at me.

Q. Had you any conversation with him?

A. No Sir, we made our thoughts known thro' the medium of a servant. I was not in his company. I had no opportunity.

Q. You say you received two notes from him?

A. Yes Sir, I did.

Q. What did you do with them?

A. I burnt them as soon as I read them.

Q. How long before you left Miss Mills, had you received the last note?

A. About five days or a week, I had then conceived a mutual affection for him, and nothing happened to prevent our going to be married.

Mr. BOND. We have done.

Mr. RECORDER. Gentlemen of the Jury, the Counsel for the prosecution have done their duty;
and

and independently of Mrs. Perry's evidence, the evidence on the part of the prosecution, is so very slight that you cannot hesitate a moment in finding the prisoner Not Guilty.

Mr. LEWIS, Clerk of the Arraigns. Gentlemen of the Jury are you agreed in your verdict. Is the prisoner at the bar Guilty or not Guilty?

Jury. NOT GUILTY.

Clerk of the Arraigns. Not Guilty, and so you say all.

Counsel for the Prosecution,
Mr. N. BOND, Mr. LENS, and Mr. GRIFFITHS.
Attorney, Mr. LOWTON.

Counsel for the Prisoner,
Mr. ERSKINE, Mr. FIELDING, Mr. MILLS,
and Mr. DAWES.

Attornies, Messrs. HEARNE and PEARCE.

On the acquittal, the Hall resounded with the acclamations of the people for about half an hour.

COMMENTARY

COMMENTARY

ON THE

TRIAL.

Parturient montes nascitur ridiculus mus.

"The Mountain labor'd and produced a Mouse."



NEVER was a sentence of that elegant augustan poet Horace, more verified than in the case of Mr. Perry. His marriage according to the *lex loci*, is the mountain; and his trial for taking away his wife, is the delivery of a mouse. Rage, vengeance and envy, combined to bring the willing travellers to justice; and a grand jury of Bristol were induced to find a bill against the husband for forcible abduction, and marrying his wife against her consent. Had the prosecutors or their advisers properly considered the law—the statute of the 3. Hen. 7. chap. 2. 39. Eliza. chap. 9. the 4. and 5. Phil. and Mary, chap. 8. down to the 26. Geo. 2. chap. 33. they must have seen that every requisite to attach guilt on Mr. Perry was im-

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possible

possible to be found. To come within these statutes, the taking the lady away must be by force, within the realm of England, where she must be married against her will, or defiled, or by her husband's consent to another. Now Mrs. Perry went voluntarily away with Mr. Perry, within the reach of the old statute; and by her own consent was married in Scotland, where *that statute does not extend*. The secondary act of marrying her was out of England, and not cognizable by the English law. By our marriage act, if they had married in England, their marriage would have been void. To constitute the crime, the forcible taking and marriage against the lady's consent, must have been in England. The former without the latter is no offence. In Brown's case 25. cha. 2. reported in 1 Ventris 243, he forced one Lucy Ramfay out of a coach in Hyde Park, and carried her against her will to his lodgings in the Strand, where under threats of carrying her abroad, he next morning married her. Tho' his wife *de facto* she was admitted an evidence *against* him, and on her evidence he was convicted and hanged. Here the taking was forcible, and the marriage against the lady's will. Both facts were committed in England; but in Mrs. Perry's case, there was no forcible taking in England. His wife went away of her own will, and they both knowing the cloggs of the English marriage act, fled to an excepted country, where they were freely married according to the law of the place, which is out of the reach of the old statute of Henry the 7. inasmuch
that

that if the taking away had been by force in Bristol, which it certainly was not, and the marriage afterwards by consent, as it undoubtedly was, it would have been good. This is the offence in the minds only of those who envy the one, or wish to have made the other lawfully their own. Every dispassionate person smiles at their conduct, and laments their lack of a little sense to have taught them better; it being indisputable that Mr. Perry is entirely out of the reach of the six points in Fulwood's case reported in cro. cha. 482.

In the case of one Swensden, the last in the books, 1st of Queen Anne, State Tr. V. 5. p. 460. he forcibly took away Pleasant Rawlins, by causing her to be arrested on a false debt, and under pretence of bailing her to keep her out of Newgate, he married her against her consent. Here again tho' she was a wife *de facto* she was an evidence against him; and on her evidence he was convicted and hanged.

In a word, all the cases that have happened are so clear, that it excites astonishment in us, that the Grand Jury should find a bill against a Gentleman, for what the very actions of the parties themselves, denied to be true. If the Lady had been forced, would she have silently suffered herself to be concealed with her husband, as she was in London—would she have been silent in a journey to Scotland, and back to the metropolis—would she have made

a voyage

a voyage from the coast of Essex to Ostend, in boy's cloaths, as she freely did, on the testimony of the honest captain of the vessel—would she have interpreted the language of a foreign distracted country for her husband and servants as she did—would she have married Mr. Perry, by the desire too, of her own mother, a second time in London as she did—would she have been a mother herself as she is, by Mr. Perry—would she have adhered to him in prison as she has done—and on his arraignment, have petrefied the Court by looking it in the face, on the part of her imprisoned husband—if she had been *forced* away from school and married *against* her will? No. No. Yet, as if absurdity were to be followed up by absurdity to the very last, instead of suffering handsomely Mr. Perry to be discharged by Proclamation, he underwent a trial of eight hours; if a trial it deserves to be called, in a case where no evidence whatever went at all to prove the imputed guilt. This the Jury have openly declared. But this hopeless trial is over, and peace to its *manes*. The promoters of it will now have a little cool leisure to reflect on all they have done; and with the assistance of these pages, feel some remorse. They are written with no ungenerous view; but to expose the plain honest nakedness of truth, which tho' it has limpingly travelled o'er a thorny road, now in the end hath overtaken falsehood, and reached the inning post of the race, to its everlasting shame.

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To those who nevertheless are uncourtly enough to indulge their ill founded prejudices, and in spite of the foregoing trial, doubt the credibility of Mrs. Perry, let it be known, that their doubts disgrace them. The evidence for the prosecution—the mild, placid, innocent history Mrs. Perry gave of her elopement, makes manifest to them and the world, that nothing but truth came from her charming lips ; and to assert the contrary is hideous and abhorrent. It is adding insult to oppression, and should be condemned in the severest terms.

Of the propriety of admitting Mrs. Perry a witness, so much has been said, by those worthy and able men, Mr. Erskine and Mr. Fielding, who poured forth a torrent of eloquence, which they stopt with their tears, on the subject, and so little by Mr. N. Bond (who never made a better speech in his life) that we can here only superadd, that if a wife *de jure*, over whom no sort of force is proved, is *not* to be witness *for* her husband ; but is to sit gagged in a court, while his prosecutors struggle to prove, what only can be proved by herself, it is a proposition, the most abominable and injurious. But as the attempt has been made in vain, let us sing O be joyful, that we have now an authority in point to add to the doctrine, as laid down in the books on the crime of forcible abduction ; but particularly by the great Lord Hale, and Mr. Sergeant Hawkins, in their pleas of the Crown. See 1 Hale, 660.. 1 Hawkins, 109, 110. 3 Inst. 61. East 31.

H. 8 roll. Anderson 16 Eliz. Dalis on 22. 2 Mod. 128.
3 Mod. 168. 4 Mod. 145.

N. B. In answer to Mr. Bond's assertion that the witnesses for the prosecution were kept out of his way. Betty Baker was within his call, and ready to be examined *for* Mr. Perry ; but Mrs. Perry's evidence made it is unnecessary to ask her a single question.

POSTSCRIPT.

POSTSCRIPT.

AN alarm having been spread, lest the strictures laid down in the course of these sheets, should by their severity harrow up the soul and freeze the blood of those who have taken the most active part against Mr. Perry, the author would not do justice to himself, if he did not assure them in particular, and the public in general, in the language of Terence, that he is a man, and that nothing whereby his fellow-creatures are affected, can ever be indifferent to him. *Homo sum humani nihil a me alienam puto.* Unaccustomed to judge on *de parte* evidence, even while Mr. Perry from time to time consulted him on his case; he lent an unwilling ear to every thing he heard on the part of his prosecutors. When it was suggested to him in the last summer that something should be publicly said in his extenuation, and the history of the transaction be made known, he considered that to prepossess the minds of the public, or attempt to prejudice them in support of guilt would be criminally reprehensible, because our laws abhor presumptive delinquency, and conclude every prisoner innocent till the contrary be proved in the face of his accusers.—Every endeavour to warp the judgment of others, and influence their

their opinions against him would be unquestionably wrong; consequently every thing hath studiously been kept from the press on the subject of Mr. Perry *previous* to his trial. But to develope truth in his behalf, to hold up his innocence against the Lord knows whom, when the *spiculæ* of their poison is obtunded, and their inveteracy at a stand, by his honourable acquittal, is morally generous. This is the end of the foregoing sheets. His trial was in an open court, and any person had a right to take it down on paper for the satisfaction of the public. If the likenesses be good, there will be no difficulty in discovering who sat for the pictures. Nothing is extenuated in it, nor ought set down in malice. Should it, however, provoke any thing in the shape of an answer, it shall have a liberal reply. If the author hath said any thing that may correct the judgment of Mr. Perry's prosecutors, amend their hearts, or appease their wrath, his mission will be fulfilled. In common with the rest of mankind they have his good wishes, and he entreats them to bear in remembrance, that what he has said is but an adumbration, a transcript of their own procedure, and not an invention from him. *Qui capit ille facit.*

ERRATA Page 10 line 3 for *county*, read *country*.
30 for *attractical*, read *attraction*.

THE END.



